

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

Erin L. Freeman	)	
<i>and others similarly situated,</i>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:08-cv-242 (HEH)
	)	
Capital One Bank,	)	
	)	
Defendant.	)	

**DEFENDANT CAPITAL ONE BANK'S MOTION TO STAY OR,  
ALTERNATIVELY, TO DISMISS THIS ACTION**

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7 of the United States District Court for the Eastern District of Virginia, Defendant Capital One Bank (USA), N.A. ("Capital One"), incorrectly identified as Capital One Bank,<sup>1</sup> by counsel, respectfully moves this Court for entry of an Order staying this litigation pursuant to the Federal Arbitration Act, 9 U.S.C. § 3, and stating that arbitration must proceed on an individual basis or, in the alternative, to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(1), on the ground that there exists a binding arbitration agreement between Plaintiff Erin L. Freeman and Capital One that applies to Plaintiff's sole claim. In support of this motion, Capital One relies on the accompanying memorandum.

---

<sup>1</sup> While the consumer credit card account at issue (the "Account") originated with Capital One Bank ("COB"), on March 1, 2008, COB converted to Capital One Bank (USA), N.A., a national banking association organized under federal law, and COB ceased to exist as a legal entity. The assets of COB, including the Account, now are owned by Capital One Bank (USA), N.A.

Respectfully submitted,  
CAPITAL ONE BANK (USA), N.A.

By: /s/\_\_\_\_\_

Bryan A. Fratkin (VA Bar No. 38933)  
Attorney for Defendant Capital One Bank (USA),  
N.A.  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
Phone: (804) 775-1000  
Fax: (804) 775-1061  
bfratkin@mcguirewoods.com

**Certificate of Service**

I certify that on May 20, 2008, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing (NEF) to the following:

Matthew J. Erausquin, Esq.  
Consumer Litigation Associates, P.C.  
3615-H Chain Bridge Road  
Fairfax, VA 22030  
Tel. 703-273-7770  
Fax. 888-892-3512

*Counsel for Plaintiff*

By: /s/

Bryan A. Fratkin (VA Bar No. 38933)  
Attorney for Defendant Capital One Bank (USA),  
N.A.  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
Phone: (804) 775-1000  
Fax: (804) 775-1061  
bfratkin@mcguirewoods.com